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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 **Samuel Love,**

19 Plaintiff,

20 v.

21 **Angelica Morales;**

22 **Jimbos Too, LLC**, a California
23 Limited Liability Company; and
24 Does 1-10,

25 Defendants.

26 **Case No.**

27 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

28 Plaintiff Samuel Love complains of Defendants Angelica Morales;
29 Jimbos Too, LLC, a California Limited Liability Company; and Does 1-10
30 ("Defendants") and alleges as follows:

31
32 **PARTIES:**

33
34 1. Plaintiff is a California resident with physical disabilities. He is
35 substantially limited in his ability to walk. He is a paraplegic who uses a
36 wheelchair for mobility.
37
38 2. Defendants are, or were at the time of the incidents, the real property

1 owners, business operators, lessors and/or lessees for Jimbo's Tires Too
2 ("Jimbo's") located at or about 233 E. 4th Street, Perris, California.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for
9 the events herein alleged, or is a necessary party for obtaining appropriate
10 relief. Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13

14 **JURISDICTION & VENUE:**

15 4. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to pendant jurisdiction, an attendant and related cause of
19 action, arising from the same nucleus of operative facts and arising out of the
20 same transactions, is also brought under California's Unruh Civil Rights Act,
21 which act expressly incorporates the Americans with Disabilities Act.

22 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26 **FACTUAL ALLEGATIONS:**

27 7. The Plaintiff went to Jimbo's in February 2015, to get services.

28 8. Jimbo's is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 9. Parking spaces are one of the facilities, privileges and advantages
3 offered by defendants to their customers at Jimbo's.

4 10. Unfortunately, there is not a single compliant accessible parking space
5 in the parking lot for use by persons with disabilities.

6 11. On information and belief, plaintiff alleges that compliant parking
7 spaces reserved for persons with disabilities used to exist in the parking lot.
8 Plaintiff believes that the parking has been allowed to fade, however.

9 12. Defendants, have no procedure in place to prevent its disabled parking
10 spaces from fading to oblivion. As such, the compliant parking space is no
11 longer available for persons with disabilities who want to patronize Jimbo's.

12 13. The plaintiff personally encountered this problem. This inaccessible
14 parking lot denied the plaintiff full and equal access and caused him
difficulty.

15 14. Plaintiff would like to return and patronize Jimbo's but will be deterred
16 from visiting until the defendants cure the violation. Plaintiff lives in
17 Riverside County and shops and travels within the County on a regular basis.
18 He would like to return.

19 15. The defendants have failed to maintain in working and useable
20 conditions those features required to provide ready access to persons with
21 disabilities.

22 16. Given the obvious and blatant violations, the plaintiff alleges, on
23 information and belief, that there are other violations and barriers on the site
24 that relate to his disability. Plaintiff will amend the complaint, to provide
25 proper notice regarding the scope of this lawsuit, once he conducts a site
26 inspection. However, please be on notice that the plaintiff seeks to have all
27 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
28 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,

1 he can sue to have all barriers that relate to his disability removed regardless
2 of whether he personally encountered them).

3 17. Additionally, on information and belief, the plaintiff alleges that the
4 failure to remove these barriers was intentional because: (1) these particular
5 barriers are intuitive and obvious; (2) the defendants exercised control and
6 dominion over the conditions at this location and, therefore, the lack of
7 accessible facilities was not an “accident” because had the defendants
8 intended any other configuration, they had the means and ability to make the
9 change.

10

11 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
12 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
13 defendants (42 U.S.C. section 12101, et seq.)

14 18. Plaintiff repleads and incorporates by reference, as if fully set forth
15 again herein, the allegations contained in all prior paragraphs of this
16 complaint.

17 19. Under the ADA, it is an act of discrimination to fail to ensure that the
18 privileges, advantages, accommodations, facilities, goods and services of any
19 place of public accommodation is offered on a full and equal basis by anyone
20 who owns, leases, or operates a place of public accommodation. See 42
21 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

22 a. A failure to make reasonable modifications in policies, practices,
23 or procedures, when such modifications are necessary to afford
24 goods, services, facilities, privileges, advantages, or
25 accommodations to individuals with disabilities, unless the
26 accommodation would work a fundamental alteration of those
27 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

28 b. A failure to remove architectural barriers where such removal is

1 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
2 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
3 Appendix “D.”

4 c. A failure to make alterations in such a manner that, to the
5 maximum extent feasible, the altered portions of the facility are
6 readily accessible to and usable by individuals with disabilities,
7 including individuals who use wheelchairs or to ensure that, to
8 the maximum extent feasible, the path of travel to the altered
9 area and the bathrooms, telephones, and drinking fountains
10 serving the altered area, are readily accessible to and usable by
11 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

12 20. Pursuant to 28 C.F.R., Part 36, Appendix D (herein after “1991
13 Standards”), section 4.1.2, and 36 C.F.R., Part 1191, Appendix B (herein
14 after “2010 Standards”), section 208.2, if a business provides between 1 and
15 25 parking spaces, they must provide at least one handicap parking space that
16 is van accessible (having an eight foot access aisle).

17 21. Here, the defendants did not provide a single compliant handicap-
18 accessible parking space in its parking lot.

19 22. A public accommodation must maintain in operable working condition
20 those features of its facilities and equipment that are required to be readily
21 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

22 23. Here, the failure to ensure that the accessible facilities were available
23 and ready to be used by the plaintiff is a violation of the law.

24 24. Given its location and options, Jimbo’s is a business that the plaintiff
25 will continue to desire to patronize but he has been and will continue to be
26 discriminated against due to the lack of accessible facilities and, therefore,
27 seeks injunctive relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
2 RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
3 51-53)

4 25. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 26. Because the defendants violated the plaintiffs' rights under the ADA,
8 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
9 Code § 51(f), 52(a).)

10 27. Because the violation of the Unruh Civil Rights Act resulted in
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
13 55.56(a)-(c).)

14

15 **PRAYER:**

16 Wherefore, Plaintiff prays that this court award damages and provide
17 relief as follows:

18 1. For injunctive relief, compelling defendants to comply with the
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
20 Plaintiffs are not invoking section 55 of the California Civil Code and is not
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act which damages provide for
23 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3 Dated: March 12, 2015

4 CENTER FOR DISABILITY ACCESS

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6 By: _____
7 Mark Potter, Esq.
8 Attorneys for Plaintiff

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